

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE ANTHONY J. BATTAGLIA, JUDGE PRESIDING

IN RE INCRETIN-BASED THERAPIES) CASE NO. 13-MD-02452-AJB
PRODUCTS LIABILITY LITIGATION)

-----) SAN DIEGO, CALIFORNIA
JANUARY 16, 2014
10:04 A.M.

THIS DOCUMENT RELATES TO ALL CASES)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
STATUS CONFERENCE

ALSO PRESENT: HONORABLE WILLIAM HIGHBERGER
HONORABLE MITCHELL DEMBIN

OFFICIAL REPORTER: JEANNETTE N. HILL, C.S.R.
(619) 702-3905

JANUARY 16, 2014

1 APPEARANCES:

2 FOR THE PLAINTIFFS: MICHAEL S. BERG

3 TELEPHONICALLY:

4 NEAL R. ELLIOTT

5 MICHAEL S. GOETZ

6 ANDY JOHNSON

7 RAMON R. LOPEZ

8 KENNETH PEARSON

9 SHIREEN MOHSTNZADEAGAN

10 MICHAEL K. JOHNSON

11 TOR HOERMAN

12 JACOB W. PLATTENBERGER

13 GAYLE M. BLATT

14 SHAYNA E. SACKS

15 THOMAS D. HAKLAR

16 NEAL L. MOSKOW

17 NICHOLAS J. DRAKULICH

18 LERAE HANCOCK

19 SIN-TING MARY LIU

20 HUNTER J. SHKOLNIK

21 MARC J. BERN

22 JAMES R. TRIPP SEGARS, III

23 THOMAS J. PREUSS

24 JULIA REED ZAIC

25 DAE YEOL LEE

JOHN M. RESTAINO

ANDRE SHERMAN

ELIZABETH LANE CROOKE

BRIAN DEPEW

RAYMOND PARKER WHITE

TIMOTHY BROWN

ANDREW SETH HARRIS

DAVID MCMASTER

JOSEPH WAECHTER

FOR THE DEFENDANTS:

SCOTT M. EDSON

MAXWELL S. KENNERLY

VICKIE E. TURNER

DOUGLAS R. MARVIN

PAUL E. BOEHM

CHRISTOPHER M. YOUNG

LOREN H. BROWN

RAYMOND M. WILLIAMS

HEIDI LEVINE

NINA M. GUSSACK

KENNETH KING

STEPHEN P. SWINTON

RICHARD B. GOETZ

RYAN L. THOMPSON

JANUARY 16, 2014

SAN DIEGO, CALIFORNIA; THURSDAY, JANUARY 16, 2014; 9:47 A.M.

THE COURT: WELL, GOOD MORNING TO ALL OF YOU. I AM GOING TO READ THE ROLL SHEET THAT I HAVE FOR PURPOSES OF THIS CONFERENCE CALL, TO IDENTIFY THOSE ON THE LINE. AND THEN I WILL GO BACK AND IDENTIFY SO THAT THERE IS A RECORD SOMEWHERE OF THOSE THAT PARTICIPATED IN THE INFORMAL CHAMBERS CONFERENCE THIS MORNING.

SO TAKING IT FROM THE TOP, JUDGE HIGHBERGER, ARE YOU ON THE LINE FOR THIS CONFERENCE?

JUDGE HIGHBERGER: HERE, WITH APOLOGIES IN ADVANCE THAT I WILL HAVE TO LEAVE AT 10:30.

THE COURT: OKAY. WE MAY BE WRAPPED UP BY THEN. WE'LL SEE. IT DEPENDS ON HOW LONG THIS LIST IS.

MIKE COMER, ARE YOU PRESENT?

HEARING NONE.

SCOTT EDSON.

MR. EDSON: YES, YOUR HONOR.

THE COURT: NEAL ELLIOTT, JR.

MR. ELLIOTT: YES, SIR. HERE.

THE COURT: MICHAEL GOETZ?

MR. GOETZ: YES, SIR. HERE.

THE COURT: ANDY JOHNSON?

NOPE.

RAMON LOPEZ?

MR. LOPEZ: HERE, YOUR HONOR.

JANUARY 16, 2014

1 **THE COURT:** THANK YOU.

2 MAX KENNERLY.

3 HOW ABOUT NEIL OVERHOLTZ?

4 IS THAT A HERE OR SOMEBODY COUGHING?

5 **MR. JOHNSON:** SORRY. YOUR HONOR, ANDY JOHNSON. I'M
6 HERE. I JUST HAD MY PHONE ON MUTE.

7 **THE COURT:** GOT YOU, MR. JOHNSON. THANK YOU.

8 TED PARR.

9 NO.

10 KENNETH PEARSON.

11 **MR. PEARSON:** HERE, YOUR HONOR.

12 **THE COURT:** PAUL STEVENS.

13 **MS. MOHSTNZADEGAN:** YOUR HONOR, GOOD MORNING. THIS
14 IS SHIREEN MOHSTNZADEGAN. I AM SUBSTITUTING IN THIS MORNING
15 FOR PAUL STEVENS.

16 **THE COURT:** OKAY. VERY GOOD. CAN YOU SPELL THE LAST
17 NAME FOR ME?

18 **MS. MOHSTNZADEGAN:** I SURE CAN. IT'S A LONG ONE.
19 M-O-H-S-T-N-Z-A-D-E-G-A-N. JUST LIKE IT SOUNDS, RIGHT?

20 **THE COURT:** JUST LIKE IT SOUNDS. EXACTLY. THANK
21 YOU.

22 AND THEN VICKY TURNER.

23 **MS. TURNER:** YES, YOUR HONOR.

24 **THE COURT:** THANK YOU.

25 MICHAEL JOHNSON.

JANUARY 16, 2014

1 **MR. JOHNSON:** YES, YOUR HONOR.

2 **THE COURT:** TOR HOERMAN.

3 **MR. HOERMAN:** HERE, JUDGE.

4 **THE COURT:** THANK YOU.

5 JACOB PLATTENBERGER.

6 **MR. PLATTENBERGER:** HERE, YOUR HONOR.

7 **THE COURT:** MR. BERG IS PRESENT AND IN THE COURTROOM
8 TODAY. SO GOOD MORNING TO YOU, MR. BERG.

9 **MR. BERG:** THANK YOU, YOUR HONOR.

10 **THE COURT:** GAYLE BLATT.

11 **MS. BLATT:** HERE, YOUR HONOR. THANK YOU.

12 **THE COURT:** SHAYNA SACKS.

13 **MS. SACKS:** GOOD MORNING, YOUR HONOR.

14 **THE COURT:** DOUG MARVIN.

15 **MR. MARVIN:** YES, YOUR HONOR.

16 **THE COURT:** PAUL BOEHM.

17 **MR. BOEHM:** YES, YOUR HONOR.

18 **THE COURT:** THOMAS HAKLAR.

19 **MR. HAKLAR:** GOOD MORNING, YOUR HONOR.

20 **THE COURT:** NEAL MOSKOW.

21 **MR. MOSKOW:** GOOD MORNING, YOUR HONOR.

22 **THE COURT:** GOOD MORNING.

23 NICHOLAS DRAKULICH.

24 **MR. DRAKULICH:** GOOD MORNING, YOUR HONOR.

25 **THE COURT:** CHRIS YOUNG.

JANUARY 16, 2014

1 **MR. YOUNG:** PRESENT, YOUR HONOR. GOOD MORNING.

2 **THE COURT:** GOOD MORNING.

3 LOREN BROWN.

4 **MR. BROWN:** HERE, YOUR HONOR.

5 **THE COURT:** RAMON WILLIAMS.

6 **MR. WILLIAMS:** PRESENT, YOUR HONOR. GOOD MORNING.

7 **THE COURT:** GOOD MORNING.

8 HEIDI LEVINE.

9 **MS. LEVINE:** GOOD MORNING, YOUR HONOR.

10 **THE COURT:** LERAE HANCOCK.

11 **MS. HANCOCK:** YES, YOUR HONOR.

12 **THE COURT:** THANK YOU.

13 ROBERT MOSIER.

14 HOW ABOUT CATHERINE HEACOX?

15 MARY LIU.

16 **MS. LIU:** HERE, YOUR HONOR. I ALSO WANTED TO LET YOU
17 KNOW THAT I AM COVERING FOR NEIL OVERHOLTZ, WHO IS IN ANOTHER
18 HEARING AT THE MOMENT.

19 **THE COURT:** SO YOU ARE HERE FOR MR. OVERHOLTZ. THANK
20 YOU. WE'LL NOTE THAT.

21 HUNTER SHKOLNICK.

22 **MR. SHKOLNICK:** HERE, YOUR HONOR.

23 **THE COURT:** MARC BERN.

24 **MR. BERN:** I'M HERE, YOUR HONOR. GOOD MORNING.

25 **THE COURT:** NINA GUSSACK.

JANUARY 16, 2014

1 **MS. GUSSACK:** YES, YOUR HONOR.

2 **THE COURT:** KENNETH KING.

3 **MR. KING:** YES, YOUR HONOR.

4 **THE COURT:** STEVE SWINTON.

5 **MR. SWINTON:** YES, YOUR HONOR.

6 **THE COURT:** THANK YOU.

7 RICHARD GOETZ.

8 **MR. GOETZ:** YES, YOUR HONOR.

9 **THE COURT:** SCOTT -- LET'S SEE. I HAVE A COUPLE
10 DUPLICATIONS HERE. SO SCOTT EDSON, WE ALREADY HAVE YOU.

11 RYAN THOMPSON.

12 **MR. THOMPSON:** HERE, YOUR HONOR.

13 **THE COURT:** AND TRIPP SEGARS.

14 **MR. SEGARS:** YES, YOUR HONOR.

15 **THE COURT:** AND TJ PREUSS?

16 **MR. PREUSS:** HERE, YOUR HONOR.

17 **THE COURT:** OKAY. AND ANYONE THAT I MISSED?

18 **MS. ZAIC:** YES, YOUR HONOR. JULIA REED ZAIC,
19 Z-A-I-C.

20 **THE COURT:** THANK YOU.

21 AND WHO ELSE?

22 **MR. LEE:** GOOD MORNING, YOUR HONOR. DAE LEE. D-A-E,
23 L-E-E.

24 **THE COURT:** THANK YOU. AND ANYONE ELSE?

25 **MR. RESTAINO:** YOUR HONOR, JOHN RESTAINO.

JANUARY 16, 2014

1 R-E-S-T-A-I-N-O.

2 **THE COURT:** ALL RIGHT. THANK YOU, SIR.

3 AND ANYONE ELSE?

4 **MR. SHERMAN:** YOUR HONOR, ANDRE SHERMAN.

5 **THE COURT:** GOT YOU.

6 WHO ELSE?

7 **MS. CROOKE:** GOOD MORNING, YOUR HONOR. ELIZABETH
8 CROOKE.

9 **THE COURT:** SPELL YOUR LAST NAME, AGAIN?

10 **MS. CROOKE:** C-R-O-O-K-E.

11 **THE COURT:** OKAY. THANK YOU. THE LINE IS A LITTLE
12 FOGGY. THAT IS WHY I AM ASKING SOME OF YOU TO SPELL HERE.

13 WHO ELSE?

14 **MR. WHITE:** YES, YOUR HONOR. PARKER WHITE.

15 **THE COURT:** OKAY. AND ANYONE ELSE?

16 **MR. BROWN:** GOOD MORNING. TIM BROWN.

17 **THE COURT:** OKAY. GOT YOU.

18 ANYONE ELSE?

19 **MR. HARRIS:** ANDREW HARRIS.

20 **THE COURT:** I'M SORRY. SAY THAT AGAIN?

21 **MR. HARRIS:** ANDREW HARRIS.

22 **THE COURT:** THANK YOU, MR. HARRIS.

23 AND ANYONE ELSE?

24 **MR. MCMASTER:** YOUR HONOR, DAVID MCMASTER.

25 **THE COURT:** WHAT WAS THE LAST NAME?

JANUARY 16, 2014

1 **MR. MCMASTER:** M-C-M-A-S-T-E-R.

2 **THE COURT:** THANK YOU, MR. MCMASTER.

3 ANYONE ELSE?

4 **MR. WAECHTER:** GOOD MORNING, YOUR HONOR. THIS IS
5 JOSEPH WAECHTER. W-A-E-C-H-T-E-R.

6 **THE COURT:** THANKS, MR. WAECHTER.

7 AND DID I MISS ANYONE?

8 OKAY. I WAS ABOUT TO WONDER IF ANYONE WAS PRACTICING
9 LAW THIS MORNING BESIDES THOSE ON THE PHONE HERE. WE HAVE THE
10 WORLD AT LARGE HERE.

11 AND ARE YOU HERE ON THE CASE, SIR?

12 NOPE. YOU'RE JUST OBSERVING.

13 ALL RIGHT. SO THANK YOU ALL FOR JOINING IN FOR THE
14 PUBLIC SESSION OF THE STATUS OF THE INCRETIN-BASED THERAPIES
15 PRODUCTS LIABILITY LITIGATION.

16 AS HAS BEEN THE FORMAT FOR THE PRIOR TWO STATUS
17 CONFERENCES, I MET WITH THE PLAINTIFFS' STEERING COMMITTEE AND
18 LEAD DEFENSE COUNSEL, ALONG WITH THE REPRESENTATIVE FOR THE
19 JCCP AND JUDGE HIGHBERGER THIS MORNING SO WE COULD QUICKLY
20 DISCUSS THE STATUS QUO AND MAKE PLANS GOING FORWARD.

21 AND PRESENT IN THE INFORMAL CONFERENCE, JUST SO IT'S
22 REPORTED SOMEWHERE, WAS JUDGE HIGHBERGER, LOREN BROWN, MICHAEL
23 JOHNSON, TOR HOERMAN, DOUG MARVIN, PAUL BOEHM, NINA GUSSACK,
24 HUNTER SHKOLNICK, RYAN THOMPSON, RICHARD GOETZ, GAYLE BLATT,
25 AND THEN BRIAN DEPEW FOR THE JCCP.

JANUARY 16, 2014

1 AND WAS THERE ANYBODY I MISSED THAT WAS PRESENT, THAT
2 I OVERLOOKED HERE, AT THE INFORMAL SESSION? NO. OKAY. GOOD.

3 AS I REPORTED AT THE SESSION THIS MORNING, THE COURT
4 HAS PUT A LINK ON THE PUBLIC WEBSITE FOR THE SOUTHERN DISTRICT
5 OF CALIFORNIA, ON THE FACE PAGE, THAT WOULD TAKE A PERSON,
6 COUNSEL, MEMBER OF THE PUBLIC, OR WHOMEVER, TO A SPECIAL PAGE
7 DEVOTED TO THIS LITIGATION. THE WEBSITE IS
8 WWW.CASD.USCOURTS.GOV. AND THERE YOU WILL FIND THE PLEADINGS
9 FOR THE LAST 60 DAYS IN THE CASE SO THAT YOU CAN ACCESS THAT
10 WITHOUT NEEDING A PACER ACCOUNT. YOU CAN ACCESS A FULL DOCKET
11 DIRECTLY FROM THERE, WITH YOUR SIGN-IN INFORMATION.

12 AND WE'VE LISTED THE MASTER CONSOLIDATED COMPLAINT,
13 THE MASTER ANSWERS, AND THE LAST STATUS CONFERENCE ORDER, ALONG
14 WITH, AS MEMORY SERVES, THE PLAN FOR DIRECT FILING AND OTHER
15 MATTERS.

16 SO THAT SHOULD BE A RESOURCE FOR THE PUBLIC AND
17 COUNSEL GOING FORWARD, FOR A QUICK STATUS ON WHAT'S HAPPENING.
18 AND I HAVE INVITED LEAD COUNSEL, THE PSC, AND DEFENSE
19 REPRESENTATIVES, IF THEY HAVE SUGGESTIONS AS TO OTHER
20 INFORMATION TO BETTER SERVE THE PUBLIC'S INTEREST, TO GO AHEAD
21 AND MAKE THOSE SUGGESTIONS, AND WE'LL CERTAINLY CONSIDER ADDING
22 THOSE TO THAT. BUT IT WILL BE A LIVING SITE THAT WE'LL CHANGE
23 AS PROCEEDINGS GO FORWARD.

24 WE HAD A PRODUCTIVE SESSION, WHICH WAS MADE EVEN MORE
25 PRODUCTIVE BY THE WORK OF COUNSEL IN THEIR COLLECTIVE DEALINGS

JANUARY 16, 2014

1 WITH MANY OF THE ISSUES, AND WITH THE PROMPT RESOLUTION OF THE
2 DISCOVERY ISSUES BY JUDGE DEMBIN, WHO IS HERE IN THE COURTROOM
3 WITH US, ALONG WITH HIS LAW CLERK. MY LAW CLERK AND STAFF ARE
4 ALSO PRESENT.

5 IN REVIEW, WE DISCUSSED THE FACT THAT THE MASTER
6 PLEADINGS ARE IN PLACE NOW. AND THAT COUNSEL HAVE COMPLETED
7 NEGOTIATION, CONFERRING ON A PROPOSED ORDER THAT WILL ADDRESS
8 ISSUES REGARDING SERVICE BY E-MAIL AND THE FILING OF THE SHORT
9 FORM COMPLAINTS DIRECTLY INTO THE MDL.

10 THAT ORDER WILL BE SUBMITTED SOON. AND THEN UPON
11 APPROVAL, WILL BE ENTERED INTO THE DOCKET OF THE COURT. AND IS
12 THE TYPE OF ORDER THAT WILL LIKELY BE A SPECIAL ITEM ON THAT
13 NEW WEBSITE WE CREATED FOR THE CASE FOR MANAGEMENT PURPOSES.

14 WE REVIEWED THE FACT THAT I HAVE GIVEN COUNSEL UNTIL
15 FEBRUARY 10TH, AN EXTENSION OF 30 DAYS, TO SUBMIT A JOINT
16 MOTION FOR THE ENTRY OF A CASE MANAGEMENT SCHEDULING ORDER, OR
17 THEIR ALTERNATE FEELINGS TO THE EXTENT THAT THEY CAN'T AGREE,
18 FOR RESOLUTION BY THE COURT.

19 AND IN THAT REGARD, WE'VE DISCUSSED SETTING A
20 TENTATIVE STATUS CONFERENCE, AS WELL AS A FURTHER STATUS
21 CONFERENCE, DEPENDING UPON THE ABILITY TO ADDRESS CASE
22 MANAGEMENT SCHEDULING SOONER THAN LATER.

23 WHAT THAT MEANS IS ON FEBRUARY 7TH, THE MORNING
24 FOLLOWING THE TWO-DAY SCIENCE-DAY PROGRAM, AT 9:00, I AM GOING
25 TO SET A TENTATIVE STATUS CONFERENCE, NOTING THAT COUNSEL OR A

JANUARY 16, 2014

1 MAJORITY OF THE LEAD COUNSEL WILL CERTAINLY BE HERE IN THE
2 DISTRICT. AND IF THE NEGOTIATIONS, THE CONFERRING AND THE
3 PLANNING GETS TO THE POINT THAT COUNSEL CAN SUBMIT EITHER A
4 JOINT MOTION OR THE RESPECTIVE POSITIONS IN ADVANCE OF THE 7TH,
5 THAT WE CAN DEAL WITH THE SCHEDULING ISSUES WITHOUT THE NEED
6 FOR A SEPARATE FOLLOW-UP DATE, WHICH WOULD ECONOMIZE ON THE
7 TRAVEL OF COUNSEL AND RELATIVE TO THE CLIENTS' EXPENSES IN THE
8 CASE.

9 TO THE EXTENT THAT THE PLANS, THEN, AND/OR PLEADINGS
10 ARE NOT READY TO BE ON FILE BEFORE FEBRUARY 7TH, THEY WILL
11 REMAIN DUE NO LATER THAN FEBRUARY 10TH, AND WE WILL HOLD A
12 TELEPHONIC CASE MANAGEMENT CONFERENCE, STATUS CONFERENCE,
13 FEBRUARY 18TH AT 9:00 TO DEAL WITH ISSUES THEN.

14 SO IF THINGS ARE MOVING FAST, WE CAN PUT A SCHEDULE
15 INTO PLACE BY FEBRUARY 7TH. IF THINGS TAKE A LITTLE MORE TIME,
16 FEBRUARY 18TH WOULD BE NEXT DATE FOR A SCHEDULE TO BE FILED,
17 AND FURTHER DISCUSSION AS TO SOME OF THE MOVING PARTS WILL BE
18 UNDERTAKEN.

19 SCIENCE DAY IS ON FEBRUARY 5TH AND 6TH, 2014.
20 COUNSEL HAVE SUBMITTED AN AGENDA. IT IS DOCUMENT 258 IN THE
21 COURT DOCUMENT THAT COVERS THE TOPICS FOR THE TWO DAYS. AND
22 PEOPLE CAN REFER TO THAT ORDER TO SEE THE ORDER OF TOPICS.

23 COUNSEL ARE CONTINUING TO WORK ON THE SPECIFIC
24 SCHEDULE FOR THE DAY IN TERMS OF ALLOTMENT OF TIME PER SIDE FOR
25 EACH OF THE VARIOUS TOPICS THAT HAVE BEEN LAID OUT.

JANUARY 16, 2014

1 OUR PLAN IS TO CONVENE AT 9:00 ON THE 5TH AND GO
2 UNTIL 5:00 THAT DAY, WITH AN HOUR LUNCH BREAK AND MID-MORNING
3 AND MID-AFTERNOON BREAKS FOR THE CONVENIENCE OF ALL. AND TO
4 RESUME THAT PLAN FEBRUARY 6TH, 9:00, AND AGAIN GO UNTIL 5:00,
5 WITH THE SAME INTERIM SCHEDULE, TO COMPLETE THE SCIENCE
6 TUTORIAL.

7 AS I SAID IN THE PAST, IF FOR SOME REASON OR BECAUSE
8 OF THE BREADTH OF THE INFORMATION WE CAN'T GET IT ALL IN, WE
9 WILL INDEED SET FURTHER DAYS. AND CERTAINLY THIS IS NOT
10 WITHOUT THE THOUGHT OF EVEN FURTHER SCIENCE DAYS IF OTHER DRUGS
11 OR OTHER ISSUES COME INTO FOCUS THAT NEED TO BE ADDRESSED ON A
12 BACKGROUND, EDUCATIONAL BASIS.

13 AND COUNSEL ARE WORKING AS TO WHAT EQUIPMENT THEY
14 WILL NEED AND WILL COORDINATE WITH THE COURT THROUGH A VENDOR
15 THAT MS. BLATT IS GOING TO BE DEALING WITH TO GET THE REQUISITE
16 EQUIPMENT IN FOR THE DEMONSTRATIONS, THE DISCUSSIONS THAT WILL
17 TAKE PLACE.

18 AND COUNSEL ARE GOING TO CONTINUE TO WORK ON A
19 GLOSSARY OF TERMS THAT MIGHT HELP FACILITATE THE PROCESS OF
20 SCIENCE DAY OR BE OF USE TO THE COURT AND THE COURT REPORTER AS
21 WE ENTERTAIN SUBSTANTIVE ISSUES GOING FORWARD WITH THOSE
22 SCIENTIFIC TERMS BANDIED ABOUT.

23 JUDGE HIGHBERGER, WOULD YOU LIKE TO REPORT ON WHAT WE
24 DISCUSSED IN TERMS OF THE JCCP AND THE CURRENT SETTING OF A
25 PANCREATITIS TRIAL IN FEBRUARY OF THIS YEAR?

JANUARY 16, 2014

1 **JUDGE HIGHBERGER:** CERTAINLY. FIRST, WITH THE
2 CONSENT OF COUNSEL IN THE COORDINATED PROCEEDING, A COPY OF THE
3 JOINT SUBMISSION ON THE FEDERAL DOCKET, ITEM NUMBER 258, THE
4 SUBMISSION REGARDING SCIENCE DAY, WILL BE FILED ON THE
5 COORDINATED PROCEEDING AND UPLOADED TO FILE AND SERVE EXPRESS
6 AS A FILE DOCUMENT.

7 THE TRIAL IS SCHEDULED IN THE PANCREATITIS CASE TO
8 START ON THE DAY AFTER PRESIDENT'S DAY, TUESDAY, FEBRUARY 18.
9 A NUMBER OF IN LIMINES WILL BE HEARD NEXT WEEK. SOME SMOKE
10 SIGNALS INDICATE A COMPROMISE MIGHT BREAK OUT, BUT THE
11 COMPLEXITIES OF WORKING COMPROMISES ARE SUCH THAT I AM
12 CURRENTLY ANTICIPATING BEING IN TRIAL AT THAT TIME.

13 AND, OF COURSE, IT'S NOT A CANCER CASE. AND I THINK
14 THAT IS ALL -- OH, ON THE POINT OF DISCOVERY COORDINATION,
15 MS. CROOKE AND MR. GOETZ CONCURRED THAT THEY ARE WORKING ON AN
16 OPEN ISSUE ABOUT ACCESS TO CERTAIN ANIMAL SLIDES. AND APART
17 FROM THAT, THERE IS NO ISSUES OF DISCOVERY WHERE THE FEDERAL
18 AND THE STATE COURT ACTIONS OVERLAP SUCH THAT THEY NEED
19 AFFIRMATIVE EFFORTS BY MYSELF TO COORDINATE WITH JUDGE DEMBIN
20 TO TRY TO HAVE HARMONIOUS AND LOGICAL DISCOVERY RULINGS.

21 THE COURT STANDS READY, OBVIOUSLY, TO DO THAT IN THE
22 FUTURE AS TO WHEN THOSE KINDS OF PROBLEMS BECOME MANIFEST.

23 **THE COURT:** AND, JUDGE HIGHBERGER, YOU PLAN ON
24 ATTENDING SCIENCE DAY.

25 **JUDGE HIGHBERGER:** DEFINITELY. BOTH DAYS, STARTING

JANUARY 16, 2014

1 AT 9:00 EACH DAY.

2 **THE COURT:** BUT IN TERMS OF FURTHER STATUS
3 CONFERENCES AT THIS POINT, DO YOU FEEL THAT YOUR TIME IS NOT
4 NECESSARY TO DEVOTE TO THOSE BUT YOU WILL BE IN TOUCH AND
5 COORDINATE WHEREVER ISSUES SEEM TO BE WORKING EITHER AT CROSS
6 PURPOSES, OR WE CAN OTHERWISE FACILITATE THE LITIGATION IN OUR
7 COURTS?

8 **JUDGE HIGHBERGER:** THAT WAS CERTAINLY MY SENSE OF IT.
9 AND WE MAY HAVE TIME TO CHAT A BIT, OFF THE RECORD, WITH THE
10 CONSENT OF COUNSEL, IN THE COURSE OF SCIENCE DAY, WITH YOURSELF
11 AND JUDGE DEMBIN. PERHAPS CIRCUMSTANCES WILL CHANGE BY THE END
12 OF DAY TWO. BUT, AT THE MOMENT, I THINK WE KNOW WHERE WE ARE
13 IN TERMS OF REACHING OUT. AND WHEN THE LAWYERS TELL US THAT
14 THE DISCOVERY THEY WANT FROM US IS AN EFFORT TO WHIPSAW THE TWO
15 DIFFERENT COURTS, THEN WE'LL OBVIOUSLY HAVE TO BE BACK IN
16 TOUCH. BUT NOBODY IS WHIPSAWING ANYBODY AT THE MOMENT.

17 **THE COURT:** THANK YOU FOR THAT UPDATE.

18 NOW, MS. CROOKE AND MR. DEPEW, AS THE JCCP
19 REPRESENTATIVES HERE ON THE PLAINTIFFS SIDE DO YOU WANT TO ADD
20 ANYTHING WITH REGARD TO ANY OF THESE ISSUES?

21 **MS. CROOKE:** NO, YOUR HONOR. THIS IS MS. CROOKE. I
22 THINK EVERYTHING THAT HAS BEEN SAID SO FAR IS EXACTLY AS WE
23 UNDERSTAND IT. THANK YOU.

24 **THE COURT:** VERY GOOD. MOVING ON, WE ALL DISCUSSED
25 THE FACT THAT THERE ARE AN INCREASING NUMBER OF THYROID CANCER

1 CASES THAT ARE PENDING NOW IN THE SOUTHERN DISTRICT OF
2 CALIFORNIA. I BELIEVE 35 IS THE APPROXIMATE NUMBER, 34 OF
3 WHICH HAVE BEEN ASSIGNED TO MY COURT AND TO JUDGE DEMBIN'S
4 COURT. AND COUNSEL FOR ELI LILLY AND AMYLIN ARE DISCUSSING
5 WITH PLAINTIFFS' COUNSEL THE POTENTIALS FOR COORDINATION OR
6 CONSOLIDATION OF THE CASE ON A LOW-NUMBER BASIS, OR THE
7 POTENTIAL FILING OF A MOTION FOR ENTRY OF THOSE INTO THE MDL.

8 TO BE CLEAR, AT THIS POINT, THE MDL ONLY IS WITH
9 REGARD TO THE PANCREATIC CANCER CASES, BUT COUNSEL ARE
10 CONTINUING THEIR EFFORTS TO PUT THOSE THYROID CASES INTO A
11 POSTURE THAT THEY CAN BE MANAGED, EITHER THROUGH THE MDL
12 PROCESS OR THROUGH A CONSOLIDATION COORDINATION PROCESS. AND
13 WE'LL CONTINUE TO MONITOR THAT PROGRESS.

14 AND, OF COURSE, THOSE CASES, AS WE GO FORWARD, THE
15 ESTIMATE IS THAT THERE COULD BE HUNDREDS OF THOSE CASES,
16 POTENTIALLY, AT SOME POINT. BUT FOR NOW, 35, ALL OF WHICH WERE
17 FILED HERE IN THE SOUTHERN DISTRICT, EXIST, TO MY KNOWLEDGE.

18 WE ALSO DISCUSSED THE FACT THAT THERE HAVE BEEN TWO
19 OR THREE CASES FILED IN THIS COURT, ASSIGNED TO ME, WITH REGARD
20 TO THE DRUG ONGLYZER, O-N-G-L-Y-Z-E-R, THAT IS PRODUCED BY
21 BRISTOL-MYERS SQUIBB AND ASTRAZENECA. AND THE ALLEGATIONS
22 THERE ARE THAT THEY ARE INCRETIN-MIMETIC-TYPE MEDICATIONS AND
23 HAVE ALLEGEDLY CAUSED PANCREATIC CANCER. AND DISCUSSION AND
24 WORK WILL GO FORWARD TO LOOK AT JOINING THOSE, PERHAPS, OR
25 OTHERWISE A PLAN TO MANAGE THOSE IN THIS COURT.

JANUARY 16, 2014

1 THERE MAY NOT BE AS MANY OF THOSE CASES, POTENTIALLY,
2 AS WITH THE CASES WITH THE FOUR DRUGS INVOLVED IN THE MDL, OR
3 THE DRUGS INVOLVED IN THE THYROID, BECAUSE ONGLYZER IS A NEWER
4 MEDICATION.

5 I WAS ADVISED, AND I WILL PROBABLY HEAR MORE ABOUT
6 THIS AT SCIENCE DAY, BUT THERE ARE SIX INGREDIENTS THE
7 PLAINTIFFS, I THINK, ASSERT TO THE VARIOUS DRUGS, THAT HAVE
8 SOME IMPACT UPON THE CLAIMED INJURIES. AND THOSE SIX
9 INGREDIENTS CAN BE IN AS MANY AS 14 DRUGS. SO THERE IS A
10 POTENTIAL THAT OTHER DRUGS WILL COME FORWARD AND BE RELATED IN
11 SOME WAY. AND WE'LL DEAL WITH THOSE AS THAT HAPPENS.

12 NOW, LOOKING THROUGH MY NOTES, I THINK I HAVE
13 SUMMARIZED THE EXTENT TO WHICH WE'VE DISCUSSED THE CASE, THE
14 ISSUES, THE MANAGEMENT, AND THE PROCEEDINGS GOING FORWARD.

15 AND TO THE EXTENT THAT I HAVE MISSED SOMETHING,
16 ANYONE WANT TO ADD EITHER A REVIEW OF WHAT WE'VE DEALT WITH
17 THIS MORNING OR BRING UP ANYTHING NEW?

18 **A VOICE:** YOUR HONOR, NOTHING FROM PLAINTIFFS'
19 COUNSEL.

20 **THE COURT:** AND FROM ANY OF THE DEFENSE GROUP?

21 **A VOICE:** NO, YOUR HONOR.

22 **THE COURT:** OKAY. AND, JUDGE HIGHBERGER, I DON'T
23 KNOW IF YOU HAVE LEFT YET.

24 **JUDGE HIGHBERGER:** OH, I'M HERE, BUT I DON'T HAVE
25 ANYTHING ELSE.

1 **THE COURT:** OKAY. SO THAT TELLS US WHERE WE'VE BEEN
2 AND WHERE WE'RE GOING. AND UNLESS THERE IS SOMETHING ELSE THAT
3 WE MIGHT CHARACTERIZE AS NEW BUSINESS OR OTHER BUSINESS AT THIS
4 POINT, WE'LL RECESS THE HEARING FOR TODAY. I WILL PUT OUT
5 ANOTHER SUMMARY ORDER LIKE I HAVE DONE IN THE PAST.

6 AND THE PLAN WILL BE THAT THE PSC AND THE DEFENSE
7 LEADERS, THE COURT, THE JUDGES WILL ALL CONVENE FEBRUARY 5TH AT
8 9:00 FOR SCIENCE DAY. AND THEN WE'LL FOLLOW UP AS I'VE
9 DICTATED IN TERMS OF WHAT WE'VE LAID OUT THIS MORNING:
10 FEBRUARY 7TH AS A POTENTIAL TENTATIVE CASE MANAGEMENT, AND
11 FEBRUARY 18 AS THE FINAL, AS NEEDED.

12 SO WITH THAT, JUDGE DEMBIN, ANYTHING YOU WOULD LIKE
13 TO ADD, SIR?

14 **JUDGE DEMBIN:** THANK YOU, NO.

15 **THE COURT:** I THINK WE HAVE COVERED IT. SO WE'LL BE
16 IN RECESS TO RECONVENE FOR SCIENCE DAY IN ABOUT THREE WEEKS.
17 THANK YOU, EVERYONE, FOR YOUR CONTINUED COOPERATION.

18 WE ALL NEED TO WORK TOGETHER ON THIS BECAUSE IT'S A
19 BIG PROJECT, AND THE MORE WE CAN ECONOMIZE AND FACILITATE
20 THROUGH AGREEMENT, THE BETTER FOR ALL CONCERNED. SO THANK YOU
21 FOR YOUR CONTINUED EFFORTS, AND WE'LL RECESS THE CONFERENCE AT
22 THIS TIME.

23 SO GOOD DAY TO ALL. THANKS FOR COMING.
24 (PROCEEDINGS CONCLUDED AT 10:28 A.M.)

25 ///

JANUARY 16, 2014

CERTIFICATION

I HEREBY CERTIFY THAT I AM A DULY APPOINTED,
QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED
STATES DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND CORRECT
TRANSCRIPT OF THE PROCEEDINGS HAD IN THE AFOREMENTIONED CAUSE
ON JANUARY 16, 2014; THAT SAID TRANSCRIPT IS A TRUE AND CORRECT
TRANSCRIPTION OF MY STENOGRAPHIC NOTES; AND THAT THE FORMAT
USED HEREIN COMPLIES WITH THE RULES AND REQUIREMENTS OF THE
UNITED STATES JUDICIAL CONFERENCE.

DATED: JANUARY 23, 2014, AT SAN DIEGO, CALIFORNIA.

S/N
JEANNETTE N. HILL, OFFICIAL REPORTER, CSR NO. 11148

JANUARY 16, 2014